

CHAPTER 285

EDUCATION - POSTSECONDARY

SENATE BILL 19-170

BY SENATOR(S) Rodriguez and Tate, Court, Donovan, Fenberg, Fields, Gonzales, Lundeen, Marble, Moreno, Priola, Scott, Smallwood, Todd, Williams A., Bridges, Story, Winter, Garcia;
also REPRESENTATIVE(S) Herod and Soper, Benavidez, Cutter, Gonzales-Gutierrez, Hooton, McLachlan, Melton, Singer, Weissman, Arndt, Bird, Buckner, Buentello, Coleman, Duran, Esgar, Exum, Galindo, Gray, Hansen, Jackson, Kipp, Lontine, Michaelson Jenet, Mullica, Sirota, Snyder, Tipper, Titone, Valdez A.

AN ACT

CONCERNING AN INQUIRY INTO A COLLEGE APPLICANT'S NONACADEMIC CONDUCT PRIOR TO ADMISSION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Ensuring Access to Higher Education Act".

SECTION 2. In Colorado Revised Statutes, **add** 23-5-106.5 as follows:

23-5-106.5. Authority of governing boards - student applications - criminal and disciplinary history inquiry - exceptions - definitions. (1) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ACADEMIC INSTITUTION" MEANS ANY ELEMENTARY OR SECONDARY SCHOOL OR ANY POSTSECONDARY EDUCATION INSTITUTION.

(b) "CONVICTION" MEANS A CONVICTION BY A JURY VERDICT OR BY ENTRY OF A VERDICT OR ACCEPTANCE OF A GUILTY PLEA OR A PLEA OF NOLO CONTENDERE BY A COURT. "CONVICTION" DOES NOT INCLUDE A PLEA TO A DEFERRED JUDGMENT AND SENTENCE UNTIL THE DEFERRED JUDGMENT AND SENTENCE IS REVOKED.

(c) "STATE INSTITUTION OF HIGHER EDUCATION" MEANS A STATE INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 23-18-102 (10).

(2)(a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, THE GOVERNING

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

BOARD OF ANY STATE INSTITUTION OF HIGHER EDUCATION SHALL NOT INQUIRE INTO, OR REQUIRE DISCLOSURE OF, AN APPLICANT'S CRIMINAL HISTORY, OR DISCIPLINARY HISTORY AT ANOTHER ACADEMIC INSTITUTION, ON ANY FORM OF APPLICATION, INCLUDING ELECTRONIC APPLICATIONS, FOR ADMISSION TO THE STATE INSTITUTION OF HIGHER EDUCATION.

(b) THE APPLICATION OR INSTRUCTIONS FOR THE APPLICATION FOR ADMISSION TO A STATE INSTITUTION OF HIGHER EDUCATION MUST INFORM AN APPLICANT OF THE APPLICANT'S RIGHTS PURSUANT TO THIS SECTION, INCLUDING THE RIGHT TO APPEAL A DECISION MADE BASED ON ANY INFORMATION REQUIRED TO BE DISCLOSED PURSUANT TO SUBSECTION (3) OF THIS SECTION, AND THAT, PURSUANT TO SECTION 24-72-702, THE APPLICANT IS NOT REQUIRED TO DISCLOSE ANY INFORMATION CONTAINED IN SEALED RECORDS.

(c) (I) A STATE INSTITUTION OF HIGHER EDUCATION THAT ACCEPTS A FORM OF APPLICATION THAT MAY ALSO BE USED TO APPLY FOR ADMISSION TO ANY OTHER INSTITUTION OF HIGHER EDUCATION SHALL NOT CONSIDER ANY INFORMATION PROVIDED BY THE STUDENT ON THAT APPLICATION THAT THE STATE INSTITUTION OF HIGHER EDUCATION IS PROHIBITED FROM INQUIRING INTO PURSUANT TO THIS SECTION.

(II) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A STATE INSTITUTION OF HIGHER EDUCATION MAY CONSIDER CRIMINAL CONVICTION HISTORY IF INFORMATION PERTAINING TO SUCH HISTORY IS PROVIDED ON AN APPLICATION THAT IS DESIGNED BY A NATIONAL APPLICATION SERVICE, TAILORED FOR ADMISSION TO A SPECIFIC DEGREE PROGRAM, AND USED BY POSTSECONDARY EDUCATION INSTITUTIONS IN OTHER STATES. AN APPLICANT DENIED ADMISSION BASED ON INFORMATION PROVIDED ON AN APPLICATION PURSUANT TO THIS SUBSECTION (2)(c)(II) THAT AN INSTITUTION WOULD OTHERWISE BE PROHIBITED FROM INQUIRING INTO PURSUANT TO THIS SECTION HAS THE RIGHT TO APPEAL THAT DECISION PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION.

(d) EXCEPT AS AUTHORIZED PURSUANT TO ANY OTHER SECTION OF LAW, THE GOVERNING BOARD OF ANY STATE INSTITUTION OF HIGHER EDUCATION MAY NOT OBTAIN THE CRIMINAL HISTORY, OR DISCIPLINARY HISTORY AT ANOTHER ACADEMIC INSTITUTION, OF AN APPLICANT AT ANY TIME PRIOR TO ADMITTING THE APPLICANT.

(e) A STATE INSTITUTION OF HIGHER EDUCATION MAY NOT USE AS THE BASIS FOR REJECTION OF AN APPLICANT ANY INFORMATION THAT THE INSTITUTION IS PROHIBITED FROM COLLECTING PURSUANT TO THIS SECTION, REGARDLESS OF HOW THAT INFORMATION IS OBTAINED.

(3) NOTWITHSTANDING ANY REQUIREMENT IN THIS SECTION, THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION, ON ANY FORM OF APPLICATION FOR ADMISSION, MAY INQUIRE INTO ANY OF THE FOLLOWING:

(a) AN APPLICANT'S PRIOR CONVICTIONS FOR STALKING, SEXUAL ASSAULT, AND DOMESTIC VIOLENCE;

(b) AN APPLICANT'S PRIOR CONVICTIONS, WITHIN FIVE YEARS BEFORE SUBMITTING THE APPLICATION, FOR ASSAULT, KIDNAPPING, VOLUNTARY MANSLAUGHTER, OR

MURDER;

(c) AN APPLICANT'S PRIOR DISCIPLINARY HISTORY AT ANOTHER ACADEMIC INSTITUTION FOR STALKING, SEXUAL ASSAULT, AND DOMESTIC VIOLENCE;

(d) ANY CRIMINAL CHARGES PENDING AGAINST THE APPLICANT; AND

(e) AN APPLICANT'S EDUCATIONAL RECORDS RELATED TO ACADEMIC PERFORMANCE.

(4)(a) ANY ADDITIONAL REVIEW BY A STATE INSTITUTION OF HIGHER EDUCATION OF AN OTHERWISE QUALIFIED APPLICANT BASED ON INFORMATION PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (3) OF THIS SECTION MUST BE COMPLETED WITHIN A REASONABLE PERIOD OF TIME.

(b) AN APPLICANT DENIED ADMISSION BASED ON INFORMATION PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (2)(c)(II) OR (3) OF THIS SECTION HAS THE RIGHT TO APPEAL THAT DECISION WITHIN THE STATE INSTITUTION OF HIGHER EDUCATION. THE GOVERNING BOARD OF EACH STATE INSTITUTION OF HIGHER EDUCATION SHALL ADOPT POLICIES AND PROCEDURES FOR APPEALS MADE PURSUANT TO THIS SECTION.

(5) EACH STATE INSTITUTION OF HIGHER EDUCATION SHALL PUBLISH ANY POLICY ENACTED PURSUANT TO THIS SECTION ON THE INSTITUTION'S PUBLICLY ACCESSIBLE WEBSITE AND SHALL FILE SUCH POLICIES WITH THE COMMISSION. A STATE INSTITUTION OF HIGHER EDUCATION SHALL NOTIFY THE COMMISSION AT LEAST THIRTY DAYS BEFORE ENACTING ANY CHANGE TO A POLICY FILED WITH THE COMMISSION.

(6) NOTHING IN THIS SECTION PROHIBITS A STATE INSTITUTION OF HIGHER EDUCATION FROM PROVIDING AN APPLICANT WITH INFORMATION OR COUNSELING CONCERNING LICENSURE IN A PROFESSION THAT MAY RESULT FROM A COURSE OF STUDY.

(7) A STATE INSTITUTION OF HIGHER EDUCATION MAY INQUIRE INTO AN ADMITTED APPLICANT'S CRIMINAL HISTORY WHEN OBTAINING INFORMATION PERTAINING TO PARTICIPATION IN CAMPUS LIFE OR STUDENT HOUSING. IF AN INSTITUTION ELECTS TO MAKE SUCH INQUIRIES, THE INSTITUTION SHALL CONSIDER THE FOLLOWING:

(a) THE NATURE AND GRAVITY OF ANY CRIMINAL CONDUCT AND WHETHER IT BEARS A DIRECT RELATIONSHIP TO A PARTICULAR ASPECT OF A STUDENT'S PARTICIPATION IN CAMPUS LIFE, INCLUDING BUT NOT LIMITED TO CAMPUS RESIDENCY AND CAMPUS ACTIVITIES;

(b) THE TIME THAT HAS PASSED SINCE THE OCCURRENCE OF ANY CRIMINAL CONDUCT;

(c) THE AGE OF THE STUDENT AT THE TIME OF THE CONDUCT UNDERLYING A CRIMINAL CONVICTION;

(d) ANY EVIDENCE OF REHABILITATION OR GOOD CONDUCT PRODUCED BY THE

STUDENT; AND

- (e) THE BENEFIT TO THE STUDENT OF PARTICIPATING IN CAMPUS LIFE.

SECTION 3. Act subject to petition - effective date. This act takes effect May 1, 2020; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 28, 2019